

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, *et al*,

Plaintiffs,

v

RICHARD SNYDER, *et al*

Defendants.

Civil Action No. 12-cv-10285

HON. BERNARD A.
FRIEDMAN

MAG. MICHAEL J.
HLUCHANIUK

THE STATE DEFENDANTS'
MOTION TO STRIKE
PLAINTIFFS' LATE FILED
MOTIONS IN LIMINE

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**THE STATE DEFENDANTS' MOTION TO STRIKE PLAINTIFFS'
LATE FILED MOTIONS *IN LIMINE***

Defendants, Richard Snyder, in his official capacity as Governor of the State of Michigan, and Bill Schuette, in his official capacity as the Michigan Attorney General (State Defendants), through their attorneys, move to strike the Plaintiffs' Motions *in Limine*, for the reasons expressed in the attached brief.

Respectfully submitted,

Bill Schuette
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Dated: February 5, 2014

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2014, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

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**BRIEF IN SUPPORT OF
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MOTION TO STRIKE
PLAINTIFFS' LATE FILED
MOTIONS IN LIMINE**

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**BRIEF IN SUPPORT OF THE STATE DEFENDANTS' MOTION
TO STRIKE PLAINTIFFS' LATE FILED MOTIONS *IN LIMINE***

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CONCISE STATEMENT OF ISSUES PRESENTED

1. A scheduling order shall not be modified except upon a showing of good cause and by leave of the district judge. Here, without showing good cause or seeking leave of this Court, Plaintiffs filed three untimely motions *in limine* seeking to bar four of State Defendants expert witnesses from testifying at trial. Should the Court strike Plaintiffs' late filed motions *in limine*?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Fed. R. Civ. P. 16

STATEMENT OF FACTS

Trial in this matter is set for February 25, 2014. (Doc #89). On November 21, 2013, pursuant to the parties' stipulation, this Court entered its scheduling order regarding pre-trial and discovery.

According to the order, all pre-trial motions, including *Daubert* motions, had to be filed by February 4, 2014. (Doc # 97).

Despite the Court's clear deadline, Plaintiffs filed three motions *in limine* after the motion cut-off date seeking to exclude the testimony of four of Defendants' experts. They did not seek permission from the Court for these late filings or seek to modify the scheduling order. They also fail to allege any facts showing good cause for these late filings. State Defendants are now left with minimal days to respond to three separate motions *in limine* and prepare for trial.

ARGUMENT

A court's scheduling order "is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril." *Odyssey Travel Ctr., Inc. v. RO Cruises, Inc.*, 262 F. Supp.2d 618, 631-632 (D. Md. 2003). Scheduling orders and their enforcement are regarded as the essential mechanism for cases becoming trial-ready in an efficient, just, and certain manner. *Rouse v. Farmers State Bank of Jewell, Iowa*, 866 F. Supp. 1191, 1198 (N.D. Iowa 1994).

"A [scheduling order] shall not be modified except upon a showing of good cause and by leave of the district judge" Fed. R. Civ. P. 16(b). Rule 16 also establishes sanctions for not complying with a scheduling order, with subsection (f) providing: "On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney . . . fails to obey a scheduling or other pretrial order." Fed. R. Civ. P. 16(f). The advisory committee notes to Rule 16 elaborate:

[E]xplicit reference to sanctions [reinforces] the rule's intention to encourage forceful judicial management. . . . As is true under Rule 37(b)(2), the imposition of sanctions may be sought by either the court or a party. In addition, the court has discretion to impose whichever sanction it feels is

appropriate under the circumstances. Its action is reviewable under the abuse-of-discretion standard.

Here, all parties understood the significance of this case and the importance of adhering to court ordered deadlines. Plaintiffs simply chose not to comply with those deadlines. And they did not even bother to file a motion seeking to modify the scheduling order.

Even if they did file a motion to allow the late filings, they have not established good cause to amend the scheduling order. "The primary measure of Rule 16's 'good cause' standard is the moving party's diligence in attempting to meet the case management order's requirements." *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 625 (6th Cir. 2002) (internal quotation marks and citation omitted). Lack of diligence and carelessness are "hallmarks of failure to meet the good cause standard." *West Virginia Housing Dev. Fund v. Ocwen Technology Xchange, Inc.*, 200 F.R.D. 564, 567 (S.D.W.Va. 2001). A party's failure to comply with a scheduling order due to inattention, error, or unfamiliarity with court procedures will not be excused, even if they were pro se litigants. See *McNeil v. United States*, 508 U.S. 106, 113, 124 L. Ed. 2d 21, 113 S. Ct. 1980 (1993) ("we have never suggested that

procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.").

Here, Plaintiffs are represented by counsel and simply disregarded this Court's order. Accordingly, the State Defendants request this Court to strike Plaintiffs' late filed motions *in limine*.

Alternatively, this Court could deny the Plaintiffs' motions *in limine* in their entirety since failure to follow this Court's scheduling orders concerning motions *in limine* is a sufficient ground to deny Plaintiffs' motions. See *Dietrich v Sun Exploration and Production Co.*, 142 F.R.D. 446, 449 (E.D. Mich. 1992), *aff'd* without opinion, 21 F.3d 427 (6th Cir. 1994), *cert den* 513 U.S. 872 (1994).

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, the State Defendants respectfully request that this Honorable Court strike Plaintiffs' late filed motions *in limine*.

Respectfully submitted,

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